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Attorneys for Church Defendants

FILED 09 DEC 31 2009 CLERK

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

PORTLAND DIVISION

CV '09-1523 HU

Civil No.:

NOTICE OF REMOVAL OF CIVIL ACTION

Multnomah County Circuit Court Case
No. 0911-15935

DAVID DOE, an individual proceeding
under a fictitious name,

Plaintiff,

v.

CORPORATION OF THE PRESIDING
BISHOP OF THE CHURCH OF JESUS
CHRIST OF LATTER-DAY SAINTS, a
foreign corporation sole registered to do
business in the State of Oregon;
CORPORATION OF THE PRESIDENT OF
THE CHURCH OF JESUS CHRIST OF
LATTER-DAY SAINTS AND
SUCCESSORS, a foreign corporation sole
registered to do business in the State of
Oregon; MICHAEL SIMMS, an Oregon
resident; RICHARD BOLTON, LCSW, an
Oregon resident,

Defendants.

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Defendants Corporation of the Presiding Bishop of the Church of Jesus Christ of Latter-day Saints and Corporation of the President of the Church of Jesus Christ of Latter-day Saints and Successors (hereinafter "Church defendants") respectfully submit this notice of removal pursuant to 28 USC § 1441(a), removing the above-captioned action (the "action") from Multnomah County Circuit Court to the United States District Court for the District of Oregon. As grounds for said removal, the Church defendants state as follows:

1. On or about November 16, 2009, plaintiff filed an action in the Circuit Court of the State of Oregon for Multnomah County, styled and captioned exactly as above, as Case No. 0911-15935.

2. The Church defendants were served with summons and first amended complaint ("complaint") on December 2, 2009. (Exhibit 1.) Defendant Richard Bolton, LCSW, was served with summons and complaint on or about December 2, 2009. Defendant Michael Simms has not been served with summons and complaint. This notice of removal is timely served under 28 USC § 1446(b). No other process, pleadings, or orders have been served on any defendants in the action, and no answers or other responsive pleadings have been filed.

3. The United States District Court for the District of Oregon is the appropriate court for filing a notice of removal from the Multnomah County Circuit Court, where the action is pending and, accordingly, the Church defendants respectfully remove the action to this court.

4. As confirmed by the signature of his counsel below, defendant Bolton consents to this removal. Defendant Simms has not been served and his consent to removal is not required.

**THE COURT HAS DIVERSITY JURISDICTION OVER THE ACTION BECAUSE
ALL PROPERLY JOINED PARTIES ARE DIVERSE**

5. 28 USC § 1441(a) provides that, unless an express statutory exception applies,

“any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending.” This court has original jurisdiction over the action because, as set forth below, it is a civil action between citizens of states and a citizen or subject of a foreign state and the amount in controversy exceeds the sum or value of \$75,000, exclusive of interests and costs. *See* 28 USC § 1332(a)(2). No statutory exception applies here. Accordingly, the action is removable to this court.

Citizenship of the Parties

6. At the time of this filing and at all times relevant to this notice of removal, including but not limited to the time this lawsuit was filed, plaintiff is and has been a citizen of the state of Oregon, and is and has been domiciled in Oregon, residing there and with the intent to remain there.

7. At the time of this filing and at all times relevant to this notice of removal, including but not limited to the time this lawsuit was filed, the Church defendants are religious corporations sole incorporated under the laws of the State of Utah and having their principal place of operation in the State of Utah, and, accordingly, are citizens of the State of Utah.

8. The complaint heading contends that Michael Simms is an Oregon resident. But the complaint does not allege facts establishing the citizenship of defendant Michael Simms.

9. The attached Declaration from Michael Simms shows he is a Utah resident who has lived in Utah for the last 31 years and has not resided in Oregon since 1978. *See*, Exhibit 2, Declaration of Michael Simms at ¶ 3. Thus defendant Simms is and has been a citizen of the state of Utah, and is and has been domiciled in Utah, residing there and with the intent to remain there.

10. At the time of this filing and at all times relevant to this notice of removal, including but not limited to the time this lawsuit was filed, defendant Richard Bolton is and has been a citizen of the state of Oregon, and is and has been domiciled in Oregon, residing there and with the intent to remain there.

Fraudulent Joinder of Defendant Richard Bolton

11. “Joinder of a non-diverse defendant is deemed fraudulent, and the defendant’s presence in the lawsuit is ignored for purposes of determining diversity, ‘[i]f the plaintiff fails to state a cause of action against a resident defendant, and the failure is obvious according to the settled rules of the state.’” *Morris v. Princess Cruises, Inc.*, 236 F3d 1061, 1067 (9th Cir 2001) (*quoting McCabe v. Gen. Foods Corp.*, 811 F2d 1336, 1339 (9th Cir 1987)). This Court may go beyond the face of the Complaint in considering whether a defendant is fraudulently joined. *See, e.g., Morris, supra.* The complaint fails to state any viable cause of action against defendant Richard Bolton, and the failure is obvious according to settled Oregon law, making his joinder fraudulent and this removal proper.

12. The complaint fails to state any viable cause of action against defendant Richard Bolton, and the failure is obvious according to settled Oregon law, for at least the following reasons. The complaint alleges two claims for relief against defendant Bolton. The first is the Second Claim for Relief for “intentional infliction of emotional distress,” which is asserted against all defendants. (Complaint, ¶ 15.) This claim alleges that defendant Michael Simms knowingly and intentionally caused severe emotional distress to plaintiff when he sexually battered and abused plaintiff. (Complaint, ¶ 16.) There is a complete absence of facts alleged from which a factfinder could conclude that Bolton is liable for Simms’ alleged conduct on the basis of *respondeat superior*. In fact, there are no facts at all alleged about Richard Bolton in this claim. The only place in the complaint where factual allegations are made concerning Bolton is in the Fourth Claim for Relief, where it is alleged that Bolton served as a “mental health counselor” for plaintiff in 1977, after plaintiff

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was abused by Simms. (Complaint, ¶ 29.) It is further alleged that plaintiff disclosed to Bolton that Simms had molested him, and that Bolton failed to report this abuse to law enforcement. *Id.* Even if the allegations in paragraph 29 were incorporated into the Second Claim for Relief, which they are not, they would provide no conceivable basis by which Bolton could be vicariously liable for the abuse by Simms.

13. As noted, the other claim brought against Bolton is the Fourth Claim for Relief for “negligence – failure to report.” It is alleged that in 1977 Bolton had a duty to report Simms’ abuse of plaintiff to law enforcement, and that Bolton’s failure to do so was in and of itself “child abuse” such that the extended statute of limitations in ORS 12.117 would apply even though this action was filed 32 years after Bolton’s alleged failure to report. (Complaint, ¶ 30.)

14. Under *Morris, supra*, it is obvious under settled Oregon law that the Fourth Claim for Relief fails to state a cause of action against Bolton. First, no Oregon authority supports the contention that a private cause of action for negligence exists for failure to comply with the reporting statute. Second, nothing in the legislative history of ORS 12.117 nor in the case law interpreting that statute supports the contention that a failure to report child abuse could itself be considered “child abuse” as that term is used in ORS 12.117(1) and defined in ORS 12.117(2). Finally, there are no facts alleged in the complaint which would permit a reasonable inference that the alleged failure to report was a cause of damage to plaintiff.

Amount in Controversy

15. According to the complaint, plaintiff seeks combined economic and noneconomic damages of at least \$4,750,000, exceeding the \$75,000 (exclusive of interest and costs) amount in controversy requirement of 28 USC § 1332.

16. Pursuant to 28 USC § 1446(d), a copy of this notice of removal is being

promptly filed with the Clerk of the Multnomah County Circuit Court.

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WHEREFORE, the Church defendants give notice that this action, now pending in the Circuit Court of the State of Oregon for the County of Multnomah as Case No. 0911-15935, is hereby removed from that court to this Court.

DATED: December 31, 2009

BULLIVANT HOUSER BAILEY PC

By David A. Ernst

Stephen F. English

OSB #730843

David A. Ernst

OSB #851967

Telephone: 503.228.6351

Attorneys for Church Defendants

Defendant Richard Bolton consents to and joins in this removal.

DATED: December 30, 2009

HOFFMAN ANGELI LLP

By David Angeli (with permission)

David H. Angeli

OSB #020244

Telephone: 503.222-1125

Attorneys for Defendant Bolton

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IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR MULTNOMAH COUNTY

6 DAVID DOE, an individual proceeding under a) Case No. 0911-15935
fictitious name,)
7 Plaintiff)
8 v.)
9 CORPORATION OF THE PRESIDING)
BISHOP OF THE CHURCH OF JESUS)
10 CHRIST OF LATTER-DAY SAINTS, a foreign)
corporation sole registered to do business in the)
State of Oregon; CORPORATION OF THE)
PRESIDENT OF THE CHURCH OF JESUS)
12 CHRIST OF LATTER-DAY SAINTS AND)
SUCCESSORS, a foreign corporation sole)
registered to do business in the State of Oregon;)
MICHAEL SIMMS; and RICHARD BOLTON,)
4 LCSW,)
5 Defendants.)
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6

Plaintiff alleges:

(Common Allegations)

1.

20 Plaintiff David Doe is an adult male born in the year 1963, who at all times relevant to
21 this complaint was an unemancipated minor child who was a member of the Woodburn, Oregon
22 Church of Jesus Christ of Latter-Day Saints (LDS) Ward, and who attended church services,
23 music lessons, and various other LDS activities at the Ward facilities, all at the invitation or
24 behest of and under the guidance of LDS Defendants or agents of the LDS Defendants.

25 //

26 //

Page 1

COMPLAINT

EXHIBIT

Pg

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1

2.

2 At all times relevant to this complaint, the Corporation of the President of the Church of
 3 Jesus Christ of Latter-day Saints and Successors, was a foreign religious corporation sole of the
 4 Church of Jesus Christ of Latter-day Saints operating in Oregon. At all times relevant to this
 5 complaint, the Corporation of the Presiding Bishop of the Church of Jesus Christ of Latter-day
 6 Saints, was a foreign religious corporation sole of the LDS Church operating in Oregon. The
 7 Corporation of the President and Corporation of the Presiding Bishop will be referred to
 8 collectively hereinafter as "LDS Church" or "LDS Defendants." At all times relevant to this
 9 complaint, the LDS Church conducted regular, sustained business activity in Multnomah County,
 10 Oregon. As part of the LDS Church's religious mission, the Church authorized and selected
 11 leaders known as Bishops and Stake Presidents to administer the congregation known as the
 12 Woodburn Ward. As part of their duties for the Church, the leaders of the Woodburn Ward—all
 13 agents of the LDS Church—selected, in the form of "callings" various church administrators,
 14 spiritual leaders, home teachers, Sunday school teachers, and in particular music teachers to
 15 interact with, educate, and minister to the children involved in the Ward, including Plaintiff in
 16 this case.

17

3.

18 At all times relevant this complaint, Defendant Michael Simms (hereinafter "Simms")
 19 was a member of the LDS Woodburn Ward who was chosen by Ward leadership for various
 20 "callings," including that of church organist. In or about 1969, Defendants also assigned Simms
 21 to act as a music teacher for Plaintiff, then 11 years old with a precocious musical talent.
 22 Defendants knew that as part of his duties as a music teacher, representative, and agent of the
 23 LDS Church, Simms would be in a position of trust and confidence with LDS members,
 24 including the Plaintiff in this case.

25 ////

26 ////

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Page 2 COMPLAINT

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1

4.

2 While working in the Woodburn Ward as a church organist and music teacher to Plaintiff,
3 and for the purpose of furthering his assigned duties, Simms identified Plaintiff's family as ones
4 with an adolescent boy; befriended Plaintiff and his family; gained the family's trust and
5 confidence as an educational and spiritual guide, and as a valuable and trustworthy mentor to
6 Plaintiff; gained the permission, acquiescence, and support of Plaintiff's family to spend
7 substantial periods of time alone with Plaintiff; and sought and gained the instruction of
8 Plaintiff's parents to Plaintiff that he was to have respect for Simms' authority and to comply
9 with Simms' instruction and requests.

10

5.

11 For the purpose of furthering his duties as a music teacher and organist, and mentor to
12 Plaintiff, Simms also sought and gained the friendship, admiration and obedience of Plaintiff. As
13 a result, Plaintiff was conditioned to trust Simms, to comply with Simms' direction, and to
14 respect Simms as a person of authority in spiritual, moral, and ethical matters. The above course
15 of conduct described in this paragraph and in paragraph 4, above, is hereinafter collectively
16 referred to as "Grooming."

17

6.

18 Simms, while acting within the course and scope of his employment, agency, or apparent
19 authority, with the LDS Defendants and using the authority and position of trust as organist and
20 music teacher on behalf of the LDS Defendants—through the Grooming process—induced and
21 directed Plaintiff David Doe to engage in various sexual acts with Simms.

22

7.

23 Simms, an adult, engaged in intentional conduct that resulted in some or all of the
24 following: physical injury, mental injury, sexual abuse, and sexual exploitation of Plaintiff as
25 those terms are used in ORS 12.117. Specifically, Simms sexually abused and molested Plaintiff
26 David Doe from approximately 1974 through 1976 by engaging in forced oral sex, fondling, and

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COMPLAINT

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1 digital sodomy on approximately 100 occasions, all while Simms was acting as LDS Defendants'
2 agent.

3 8.

4 As a result of Simms' sexual abuse, molestation, and breach of authority, and trust in his
5 position as an agent of LDS Defendants to David Doe, Plaintiff David Doe has suffered and
6 continues to suffer severe and debilitating physical, mental, and emotional injury, including pain
7 and suffering, physical and emotional trauma, and permanent psychological damage distinct in
8 time and nature from the abuse, all to his non-economic damages in the amount of
9 \$4,000,000.00, the exact amount of which will be proven at the time of trial.

10 9.

11 As an additional result and consequence of Simms' sexual abuse, molestation, and breach
12 of authority, and trust to David Doe, Plaintiff David Doe has incurred and/or will incur in the
13 future, costs for counseling, psychiatric and psychological medical treatment all to his economic
14 damages in the approximate amount of \$250,000.00, the exact amount of which will be proven at
15 the time of trial.

16

17 **FIRST CLAIM FOR RELIEF**
18 Against LDS Defendants and Defendant Simms
(Sexual Abuse of a Child/*Respondeat Superior*)

19 10.

20 Plaintiff David Doe realleges and incorporates by reference paragraphs 1 through 9,
21 above.

22 11.

23 The sexual molestation described in paragraphs 6 and 7, above, constituted a harmful or
24 offensive touching of Plaintiff David Doe, to which he did not and could not consent.

25 ////

26 ////

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COMPLAINT

EXHIBIT

Pg 4

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12

2 Simms used the Grooming process described in paragraphs 4 and 5 to accomplish his
3 acts of sexual molestation and battery of the Plaintiff David Doe. Simms' Grooming was or
4 reasonably appeared to be (1) committed in direct connection and for the purposes of fulfilling
5 Simms' apparent employment and agency with the LDS Defendants; (2) committed within the
6 time and space limits of his agency; (3) done initially and at least in part from a desire to serve
7 the interests of the LDS Defendants; (4) done directly in the performance of his duties as an agent
8 of LDS Defendants; (5) consisted generally of actions of a kind and nature which Simms was
9 required to perform as an agent of LDS Defendants; and (6) was done at the direction of, and
10 pursuant to, the power vested in him by the LDS Defendants. The Grooming—undertaken
11 within the scope of Simms' agency or apparent authority—led to and resulted in Plaintiff's
12 abuse.

13

14 As a result of Simms' sexual molestation and battery, Plaintiff David Doe has suffered
15 permanent and lasting injuries distinct from the abuse itself, as detailed above in paragraphs 8
16 and 9, above..

17 14

18 In 2007, Plaintiff David Doe discovered the causal connection between his abuse set forth
19 in paragraph 6 and 7 above, and the injuries he suffered—distinct in time and nature from the
20 abuse itself—as set forth in paragraphs 8 and 9 above. Prior to 2007, Plaintiff David Doe did not
21 discover, and could not reasonably have discovered, the causal connection between the abuse
22 itself and the injuries he suffered that were distinct from, and incurred as a result of, the abuse.

23 *|||||*

24 1111

25 *|||||*

26 *|||||*

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1 **SECOND CLAIM FOR RELIEF**

2 Against All Defendants

3 (Intentional Infliction of Emotional Distress/*Respondeat Superior*)

4 15.

5 Plaintiff David Doe realleges and incorporates by reference paragraphs 1 through 14,
6 above.

7 16.

8 Simms, while engaging in the Grooming process described in paragraphs 4 and 5, above,
9 knowingly and intentionally caused severe emotional distress to Plaintiff David Doe when he
10 sexually battered and abused Plaintiff. Plaintiff David Doe did in fact suffer severe emotional
11 distress as a result of this abuse, and the sexual abuse of a child is beyond the bounds of all
12 socially tolerable conduct.

13 17.

14 Simms used the Grooming process described in paragraphs 4 and 5, above, to
15 intentionally inflict severe emotional distress through the abuse of Plaintiff David Doe. Simms'
16 Grooming was committed within the course and scope of his agency or apparent authority as
17 described in paragraph 12, above.

18 18.

19 As a result of Simms' intentional infliction of emotional distress on Plaintiff David Doe
20 and Simms' breach of trust and position as a teacher and mentor to the Plaintiff, Plaintiff David
21 Doe has suffered permanent and lasting injuries distinct from the abuse itself, as detailed above
22 in paragraphs 8 and 9, above.

23 19.

24 In 2007, Plaintiff David Doe discovered the causal connection between his abuse set forth
25 in paragraph 6 and 7 above, and the injuries he suffered—distinct in time and nature from the
26 abuse itself—as set forth in paragraphs 8 and 9 above. Prior to 2007, Plaintiff David Doe did not

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Page 6 COMPLAINT

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1 discover, and could not reasonably have discovered, the causal connection between the abuse .
2 itself and the injuries he suffered that were distinct from, and incurred as a result of, the abuse.

3

THIRD CLAIM FOR RELIEF
Against LDS Defendants
(Negligence — Failure to Protect)

6 20.

7 Plaintiff David Doe realleges and incorporates by reference paragraphs 1 through 19,
8 above.

9

21.

11 LDS Defendants created a special relationship with Plaintiff by inviting and encouraging
12 him to participate in religious and musical activities within the LDS Church and with their agent
13 Simms. This special relationship created a duty of care on the part of LDS Defendants to ensure
14 Plaintiff's safety while participating in LDS Defendants' activities.

15 22

16 At some point during the abuse of Plaintiff, Plaintiff acknowledged to his mother that he
17 had been abused by Simms. Unbeknownst to Plaintiff, his mother approached the then-Stake
18 President (a former LDS Bishop) in 1975, and informed him of Simms' abuse of Plaintiff. LDS
19 Defendants and their agents failed to investigate Plaintiff's allegations, failed to remove Simms
20 from his position as organist for the church or from his other callings, failed to report the abuse
21 to law enforcement, failed to prevent Simms from attending services at the Ward, failed to
22 disclose Simms' abuse to the general LDS Ward community, and failed to exercise what control
23 they had over Simms as their agent to prevent him from continuing to molest Plaintiff.

24 Plaintiff's parents did not report the abuse because of religious pressure from LDS Defendants'
25 agents to not discuss the matter with anyone else, even other members of the Ward community.

26 //

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COMPLAINT

EXHIBIT

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1 23.

2 Simms was able to continue molesting Plaintiff because Plaintiff was by then seduced by
3 Simms and sought him out. Thus, Simms was able to use his preexisting Grooming relationship
4 with Plaintiff to continue abusing him, even after the abuse was disclosed to Plaintiff's parents
5 and LDS agents.

6 24.

7 It was foreseeable to LDS Defendants that Plaintiff was placed in danger by Simms and
8 that Simms likely would molest Plaintiff again unless prevented from doing so. It was further
9 foreseeable that LDS Defendants' failure to exclude Simms from LDS Church activities or
10 remove him from his callings would lead to further abuse of Plaintiff. Finally, it was foreseeable
11 to LDS Defendants that predatory child molesters would engage in serial abuse of minors under
12 their care, that Simms likely had additional victims that had not been discovered, who denied or
13 remained silent about the abuse, or who would be abused in the future.

14

15 25.

16 LDS Defendants' failure to exclude Simms from Church activities, to protect Plaintiff, or
17 to warn the LDS Ward created a foreseeable risk of harm to Plaintiff. LDS Defendants thereby
18 knowingly allowed and permitted or encouraged child abuse through their negligence. Plaintiff's
19 interest in being free from sexual molestation is an interest of a kind that the law protects against
20 negligent invasion, and Plaintiff was in the class of victims to be protected from known child
21 molesters. LDS Defendants' failure to warn and their acquiescence to Simms' presence at
22 Church activities was unreasonable in light of the risk posed to minor boys by Simms, and was a
23 direct and foreseeable cause of the respective molestation and damages suffered by the Plaintiff,
24 as alleged in paragraphs 6, 7, 8, and 9, above.

25 ////

26 ////

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1 26.

2 In 2008, Plaintiff David Doe discovered that his mother had disclosed and discussed his
3 abuse with the Stake President in or about 1975. Prior to 2008, Plaintiff David Doe did not
4 discover that LDS Defendants had knowledge of his abuse at the time it was occurring and thus
5 had no knowledge that LDS Defendants had acted negligently in permitting his abuse to
6 continue.

7 27.

8 Pursuant to ORS § 31.725, Plaintiffs hereby give notice to LDS Defendants of their intent
9 to move for punitive damages against the LDS Defendants at any time after the filing of this
10 complaint.

11

12

13 **FOURTH CLAIM FOR RELIEF**
14 Against Defendant Richard Bolton
(Negligence — Failure to Report)

15 28.

16 Plaintiff David Doe realleges and incorporates by reference paragraphs 1 through 19,
17 above.

18

19 29.

20 Defendant Richard Bolton is an Oregon licensed clinical social worker and current
21 Oregon resident. In or around 1977, he served as a mental health counselor for Plaintiff. At that
22 time, Plaintiff disclosed to Defendant Bolton that Simms had molested him, and that Simms was
23 an adult male. Defendant Bolton failed to report this abuse to law enforcement or to the
24 Department of Human Services (DHS).

25 ////

26 ////

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COMPLAINT

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1

30.

2 Defendant Bolton created a special relationship with Plaintiff when he invited the
3 Plaintiff into a counselor-client relationship. This relationship created a duty on the part of
4 Defendant Bolton to take all steps reasonably necessary to assist Plaintiff in healing and to
5 relieve the mental anguish that Plaintiff was suffering from Simms' abuse. The definition of
6 "child abuse" under ORS 12.117 includes "mental injury" of the type that Plaintiff was suffering
7 when being treated by Bolton. Defendant Bolton knowingly allowed this child abuse in the form
8 of mental injury to continue by failing to report Plaintiffs' abuse to law enforcement or DHS.

9

31.

10 It was foreseeable to Defendant Bolton that Plaintiff would continue to suffer this child
11 abuse in the form of mental injury if no report was made, and that by failing to at least attempt to
12 involve government investigatory agencies, that Plaintiff would continue to suffer damages and
13 incur additional damages in the form of continued emotional and psychological pain and
14 suffering. Defendant Bolton's failure to report thereby created a foreseeable risk of harm to
15 Plaintiff.

16

32.

17 Plaintiff's interest in being free from continued, unaddressed mental injury as a child
18 arising from a failure to report child abuse is an interest of a kind that the law protects against
19 negligent invasion, and Plaintiff was in the class of potential victims to be protected by reporting
20 child abuse.

21

33.

22 Because of Defendant Bolton's failure to report, Plaintiff incurred a portion of his non-
23 economic damages after the dates of his treatment in the amount of \$500,000.00, the exact
24 amount to be determined by the jury at trial. As a result of Defendant Bolton's failure to report,
25 Plaintiff has also incurred a portion of his economic damages in the amount of \$100,000.00, the
26 exact amount to be determined by the jury at trial.

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Page 10 COMPLAINT

EXHIBIT 1 Pg 10

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1

34.

2 In 2007, Plaintiff David Doe discovered the causal connection between his abuse set forth
3 in paragraph 6 and 7 above, and the injuries he suffered—distinct in time and nature from the
4 abuse itself—as set forth in paragraphs 8, 9, and 33 above. Prior to 2007, Plaintiff David Doe
5 did not discover, and could not reasonably have discovered, the causal connection between the
6 abuse itself and the injuries he suffered that were distinct from, and incurred as a result of, the
7 abuse.

8

9 WHEREFORE, Plaintiffs pray for judgment against Defendants, and each of them, as
10 follows:

11 1. If successful on Plaintiff's First or Second Claims for Relief, non-economic
12 damages for Plaintiff David Doe in the amount of \$4,000,000.00, the exact amount to be
13 determined by the jury at the time of trial;

14 2. If successful on Plaintiff's First or Second Claims for Relief, economic damages
15 for Plaintiff David Doe in the amount of \$250,000.00, the exact amount to be determined by the
16 jury at the time of trial;

17 3. If successful on Plaintiff's Third Claim for Relief, non-economic damages against
18 LDS Defendants for Plaintiff David Doe in the amount of \$4,000,000.00, the exact amount to be
19 determined by the jury at the time of trial;

20 4. If successful on Plaintiff's Third Claim for Relief, economic damages against
21 LDS Defendants for Plaintiff David Doe in the amount of \$250,000.00, the exact amount to be
22 determined by the jury at the time of trial;

23 5. If successful on Plaintiff's Fourth Claim for Relief, non-economic damages
24 against Defendant Bolton for Plaintiff David Doe in the amount of \$500,000.00, the exact
25 amount to be determined by the jury at the time of trial;

26 ////

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COMPLAINT

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- 1 6. If successful on Plaintiff's Fourth Claim for Relief, economic damages against
- 2 Defendant Bolton for Plaintiff David Doe in the amount of \$100,000.00, the exact amount to be
- 3 determined by the jury at the time of trial;
- 4 7. For Plaintiffs' costs and disbursements incurred; and
- 5 8. For any other relief this Court deems just and equitable.

7 DATED this 23 day of November, 2009.

O'DONNELL CLARK & CREW LLP

Kelly Clark OSB #83172
Kristian Roggendorf, OSB #01399
Of Attorneys for Plaintiff

Gilion C. Dumas, OSB #92293
Of Attorneys for Plaintiff

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TRUE COPY

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3

4

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR MULTNOMAH COUNTY

6 DAVID DOE, an individual proceeding under a) Case No. 0911-15935
fictitious name,)
7 Plaintiff,) SUMMONS
v.)
8 CORPORATION OF THE PRESIDING)
BISHOP OF THE CHURCH OF JESUS)
9 CHRIST OF LATTER-DAY SAINTS, a)
foreign corporation sole registered to do)
10 business in the State of Oregon;)
CORPORATION OF THE PRESIDENT OF)
11 THE CHURCH OF JESUS CHRIST OF)
LATTER-DAY SAINTS AND)
12 SUCCESSORS, a foreign corporation sole)
registered to do business in the State of)
13 Oregon; MICHAEL SIMMS; and RICHARD)
BOLTON, LCSW,)
14 Defendants.)

15 TO: THE CORPORATION OF THE PRESIDING BISHOP OF THE CHURCH OF JESUS CHRIST OF
16 LATTER-DAY SAINTS

17 You are hereby required to appear and defend the complaint filed against you in the above-entitled action
18 within thirty (30) days from the date of service of this summons upon you, and in case of your failure to do so,
for want thereof, plaintiff(s) will apply to the court for the relief demanded in the complaint.

19 NOTICE TO THE DEFENDANT:
READ THESE PAPERS CAREFULLY!

20 You must "appear" in this case or the other side will win
21 automatically. To "appear" you must file with the court
a legal paper called a "motion" or "answer." The
22 "motion" or "answer" must be given to the court clerk or
administrator within 30 days along with the required
23 filing fee. It must be in proper form and have proof of
service on the plaintiff's attorney or, if the plaintiff does
24 not have an attorney, proof of service upon the plaintiff.
If you have any questions, you should see an attorney
25 immediately.

If you need help in finding an attorney, you
may call the Oregon State Bar's Lawyer
Referral Service at (503) 684-3763 or toll free
in Oregon at (800) 452-7636.

Kayler
Signature of Attorney/Author for Plaintiff

Kelly W.G. Clark, OSB# 83172
Attorney's/Author's Name (Printed) Bar No.

Trial Attorney if Other than Above (Printed)
Bar No.

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR MULTNOMAH COUNTY

6 DAVID DOE, an individual proceeding under a) Case No. 0911-15935
fictitious name,)
7 Plaintiff,) SUMMONS
v.)
8 CORPORATION OF THE PRESIDING)
BISHOP OF THE CHURCH OF JESUS)
9 CHRIST OF LATTER-DAY SAINTS, a)
foreign corporation sole registered to do)
10 business in the State of Oregon;)
CORPORATION OF THE PRESIDENT OF)
11 THE CHURCH OF JESUS CHRIST OF)
LATTER-DAY SAINTS AND)
12 SUCCESSORS, a foreign corporation sole)
registered to do business in the State of)
13 Oregon; MICHAEL SIMMS; and RICHARD)
BOLTON, LCSW,)
14 Defendants.)

TO: CORPORATION OF THE PRESIDENT OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS AND SUCCESSORS

17 You are hereby required to appear and defend the complaint filed against you in the above-entitled action
18 within thirty (30) days from the date of service of this summons upon you, and in case of your failure to do so,
for want thereof, plaintiff(s) will apply to the court for the relief demanded in the complaint.

**19 NOTICE TO THE DEFENDANT:
READ THESE PAPERS CAREFULLY!**

21 You must "appear" in this case or the other side will win
automatically. To "appear" you must file with the court
22 a legal paper called a "motion" or "answer." The
"motion" or "answer" must be given to the court clerk or
administrator within 30 days along with the required
23 filing fee. It must be in proper form and have proof of
service on the plaintiff's attorney or, if the plaintiff does
24 not have an attorney, proof of service upon the plaintiff.
If you have any questions, you should see an attorney
25 immediately.

If you need help in finding an attorney, you may call the Oregon State Bar's Lawyer Referral Service at (503) 684-3763 or toll free in Oregon at (800) 452-7836.

Signature of Attorney/Author for Plaintiff

Kelly W.G. Clark, OSB# 83172
Attorney's/Author's Name (Printed) Bar No.

Trial Attorney if Other than Above (Printed)
Bar No.

EXHIBIT Pg 17

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR MULTNOMAH COUNTY

6 DAVID DOE, an individual proceeding under a) Case No. 0911-15935
fictitious name,)
7 Plaintiff,) SUMMONS
v.)
8 CORPORATION OF THE PRESIDING)
BISHOP OF THE CHURCH OF JESUS)
9 CHRIST OF LATTER-DAY SAINTS, a)
foreign corporation sole registered to do)
10 business in the State of Oregon;)
CORPORATION OF THE PRESIDENT OF)
11 THE CHURCH OF JESUS CHRIST OF)
LATTER-DAY SAINTS AND)
12 SUCCESSORS, a foreign corporation sole)
registered to do business in the State of)
13 Oregon; MICHAEL SIMMS; and RICHARD)
BOLTON, LCSW,)
14 Defendants.)

TO: RICHARD BOLTON LCSW MSW
1698 Liberty St.
Salem, OR
(503) 370-7775

18 You are hereby required to appear and defend the complaint filed against you in the above-entitled action
19 within thirty (30) days from the date of service of this summons upon you, and in case of your failure to do so,
for want thereof, plaintiff(s) will apply to the court for the relief demanded in the complaint.

**20 NOTICE TO THE DEFENDANT:
READ THESE PAPERS CAREFULLY!**

You must "appear" in this case or the other side will win automatically. To "appear" you must file with the court a legal paper called a "motion" or "answer." The "motion" or "answer" must be given to the court clerk or administrator within 30 days along with the required filing fee. It must be in proper form and have proof of service on the plaintiff's attorney or, if the plaintiff does not have an attorney, proof of service upon the plaintiff. If you have any questions, you should see an attorney immediately.

If you need help in finding an attorney, you may call the Oregon State Bar's Lawyer Referral Service at (503) 684-3763 or toll free in Oregon at (800) 452-7636.

Signature of Attorney/Author for Plaintiff

Kelly W.G. Clark, OSB# 83172
Attorney's/Author's Name (Printed) Bar No.

Trial Attorney if Other than Above (Printed)
Bar No.

EXHIBIT Pg 15

DECLARATION OF MICHAEL SIMMS

I, Michael Simms, declare:

1. I am over eighteen years of age and have personal knowledge of the following facts to which I could competently testify if called to do so.
2. I was born on or about December 9, 1953.
3. I have lived in Utah for the last 31 years. I currently reside in Salt Lake City, Utah. I have not resided in Oregon since I left the state in 1978.
4. I recently learned about a lawsuit filed in Oregon that apparently names me as a defendant, but I have not received a copy of the complaint or otherwise been served with process in relation to any such lawsuit.

DATED: December 29, 2009.



Michael Simms

EXHIBIT 2 Pg 1

CERTIFICATE OF SERVICE

I certify that on December 31, 2009, I served a true copy of the foregoing **NOTICE OF REMOVAL OF CIVIL ACTION** on the attorneys listed below by the method indicated on said day.

Kelly Clark
1650 NW Naito Parkway, Ste. 302
Portland, OR 97209

HAND DELIVERED

Attorneys for Plaintiffs

David Angeli
Hoffman Angeli LLP
1000 SW Broadway, Ste. 1500
Portland OR 97205

HAND DELIVERED

Attorneys for Defendant Bolton



Stephen F. English
David A. Ernst

Attorneys for Church Defendants

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